

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Lee Motel)
Personal Property Account No. 095612) Davidson County
Tax year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$135,100	\$40,530

On June 25, 2007, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, this assessment was not appealed to the Metropolitan Board of Equalization ("county board") during its regular annual session for tax year 2007.

The undersigned administrative judge conducted a hearing of this matter on August 14, 2007 in Nashville.¹ In attendance at the hearing were the appellant, Ishvarbhai Patel, and Assessor's representative Kenneth Vinson.

Findings of Fact and Conclusions of Law

Mr. Patel owns and operates the Lee Motel, located at 426 Murfreesboro Road in Nashville. The property in question is used (or held for use) in the conduct of that business.

In 2007, as in the three preceding tax years, the property owner failed to file the tangible personal property schedule required by Tenn. Code Ann. section 67-5-903 by the March 1 statutory deadline. As a result, the Assessor levied a “forced assessment” on this account in the amount shown above.² Notice of this assessment, which was sent on May 18, 2007, included a statement of the taxpayer’s right of appeal to the county board and specified the last day (June 15, 2007) on which such an appeal would be accepted. The notice also advised that **“Failure to appeal the classification and/or assessment to the (county board) may result in the assessment becoming final without further right of appeal.”**

According to Mr. Patel's testimony, he filled out and returned to the Assessor's office Tax Schedule "B" (with an attached listing) on June 3, 2007. But Mr. Vinson discovered no such document in the Assessor's official records; nor did Mr. Patel attempt to schedule an appointment with the county board. Not until he received notice of this hearing, apparently, did

¹Notice of the hearing was entered on July 13, 2007.

²The 2006 forced assessed value was much lower (\$2,821).

the appellant inquire about the schedule which he claimed to have mailed to the Assessor's office.

A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and (if necessary) state boards of equalization; however, "such remedy shall be conditioned upon the filing with **the board of equalization** a complete listing or schedule of all the tangible personal property owned or used by the taxpayer in the operation of the taxpayer's business on the same form as required to be filed with the assessor." [Emphasis added.] Further, Tenn. Code Ann. section 67-5-1412(b)(1) provides that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508. [Emphasis added.]

In 1991, the General Assembly amended Tenn. Code Ann. section 67-5-1412(e) by adding the following language:

The taxpayer or owner shall have the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the (State Board) shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

The Tennessee Attorney General has opined that:

The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a **jurisdictional prerequisite** which cannot be waived by the consent of the parties. [Emphasis added.]

Tenn. Atty Gen. Op. 92-62, p. 10.

In this case, there is no question that the appellant was duly notified of the disputed assessment. Hence the status of this appeal depends on whether the proof establishes "reasonable cause" for the taxpayer's failure to appear before the county board.

The Assessment Appeals Commission, appointed by the State Board pursuant to Tenn. Code Ann. section 67-5-1502, has generally construed the term *reasonable cause* to mean some circumstance beyond the taxpayer's control (such as emergency, disability, or illness). See, e.g., Appeal of Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994); Appeal of John Orovets (Cheatham County, Tax Year 1991, Final Decision and Order, December 3, 1993).

Respectfully, based on the evidence of record, the administrative judge cannot determine that any "circumstance beyond the taxpayer's control" precluded Mr. Patel from appealing the forced assessment of the subject property to the county board. Had the

Assessor's office actually received the taxpayer's belatedly-executed schedule, it might well have recommended a reduced assessment to the county board on its own initiative. But the Assessor was certainly not obligated to do so; and, in any event, the taxpayer could not prudently have assumed that the mere submission of such document to the Assessor's office would be deemed the equivalent of an appeal or appearance before the county board.

The fact that the subject property may be worth considerably less than the amount estimated in the forced appraisal is, unfortunately, immaterial with respect to the threshold jurisdictional issue. As the Assessment Appeals Commission recently observed in a rather similar case:

...[T]he account was force assessed for the three previous years, and we must conclude the primary cause of the excessive assessment is neglect by the taxpayer's agent or employee, which we do not find to be beyond the taxpayer's control.

ABG Caulking Contractors, Inc. (Davidson County, Tax Year 2004, Final Decision and Order, May 11, 2006), p. 2.

Order

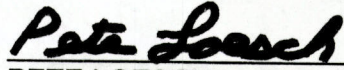
It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of August, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Ishvarbhai Patel, Lee Motel
Jo Ann North, Davidson County Assessor of Property

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